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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 1528 of 2007

Petitioner	Parmeshwar Din Yadav, S/o. Shri Chetan Prasad Yadav, aged about 51 years, Upper Division Teacher, Govt. Hr. Sec. School-Barpali-Champa, Block-Bamhnidih, Distt.-Janjgir champa (C.G.)
Versus	
Respondents	1. State of Chhattisgarh, Through The Secretary, Department of Education, D.K.S. Bhawan, Raipur (C.G.)
	2. Director Public Instruction Chhattisgarh Govt. Raipur
	3. District Education Officer, Distt.-Janjgir champa (C.G.)

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present: Mr. Anil Singh Rajput, Advocate for the petitioner.
Ms. Deepali Pandey, Panel Lawyer for the State/respondents.

O R D E R
(Passed on 16th Day of March, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. This writ petition, filed under Article 226 of the Constitution of India, impugns the validity of the order dated 23/24/08.2005 passed by the District Education Officer, District-Janjgir-Champa (Annexure P/2), whereunder the petitioner, (Upper Division Teacher) has been placed under suspension under the provisions of the Rule 9 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules, 1966").

2. The indisputable facts in nutshell are that the petitioner was working as Upper Division Teacher. According to the petitioner the appointing authority of Upper Division Teacher is the Divisional Superintendent of

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Education and the impugned order was passed by the District Education Officer, Janjgir-Champa (Annexure P/2). As per provisions of Rule 9 of the Rules, 1966, the appointing authority or any other authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor is competent to place a Government servant under suspension.

3. In the present case, the appointment order was passed by the District Education Officer which is not the appointing authority and also not superior to the appointing authority i.e. Divisional Superintendent of Education. Thus, the order is bad, and contrary to the provisions of the Rules.

4. I have gone through the pleadings and documents appended thereto. It is beneficial to quote the Rule 9 of the Rules, 1966 which is as under:-

> "9. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor, by general or special order, may place a Government servant under suspension :-
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> (a) where a disciplinary proceeding against him is contemplated or is pending; or
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> (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial :
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> [1][Provided that a Government servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him :]
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> Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.
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> (2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours ;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation : The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

[2][(2-a) Where a Government servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it is purposed to hold an inquiry against such Government servant under rule 14, a copy of the articles of charges, the statement of imputations of misconduct or misbehavior and list of documents and witnesses by which each article of charge is proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Government servant as required by sub-rule (4) of rule 14, within a period of forty-five days from the date of order of suspension :

Provided that where the disciplinary authority is the [State Government or the High Court], the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Government servant within a period of ninety days from the date of order of suspension.

(2-b) Where the disciplinary authority fails to issue to the Government servant, a copy of the charges and other documents referred to in sub-rule (2-a) within the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension :

Provided that the period of suspension shall in no case be enhanced beyond a period of ninety days from the date of the order of suspension.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority form the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5)(a) An order of suspension made or deemed to have been made under this rule, shall continue to remain in force until is is modified or revoked by the authority competent to do so :

[1][Provided that the order of suspension shall stand revoked on expiry of the period of forty-five days from the date of order of suspension in case a copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant by the disciplinary authority (if it is not the State Government) without obtaining the orders of the State Government for extension of the period for issue of the said documents, as required under sub-rule (2-b):

[2] Provided further that the order of suspension shall stand revoked on expiry of the period of 90 days from the date of order of suspension, in case the copy of charges and other documents referred to in sub-rule (2-a) are not issued to such Government servant.]

[2][(b) In respect of a Government servant, whose orders of suspension stand revoked in accordance with the first or second proviso of clause (s) the authority competent may, if it considers expedient so to do,

place him under suspension after a copy of charges and other documents, as required by sub-rule (4) of rule 14, have been issued to him.]

[3][(c)] Where a Government servant is suspended or is deemed to have been suspended, (whether in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of t hat suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.)

[1][(d)] An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate:

[2][Provided that an order of suspension made under the first proviso to sub-rule (1) of rule 9 shall not be revoked except by an order of the Government made for reasons to be recorded.]"

5. On perusal of the provisions dealing with suspension, it is clear that the suspension order can be passed by the following officers:-

(i) the appointing authority,

(ii) any authority to which the appointing authority is subordinate,

(iii) the disciplinary authority, and

(iv) any other authority empowered in that behalf by the Governor by a general or special order.

6. Second proviso of Rule 9 provides that if the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

7. In the present case, a copy of the suspension order was immediately referred to the Director, Public Instruction, Government of Chhattisgarh,

the Collector, District-Janjgir-Champa and others. Thus, the second proviso of Rule 9 of the Rules, 1966 has been applied with. Accordingly, it cannot be held that the suspension order was not passed by the competent authority and the same is bad.

8. The Supreme Court, in the case of **State of Orissa and others vs. Shiva Parashad Das**[1] held as under:-

> "3. An order of suspension passed against a Government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Art. 311 of the Constitution. This position was clearly laid down by a Constitution Bench of this Court in Mohammad Ghouse v. State of Andhra. 1957 SCR 414 : (AIR 1957 SC 246). It is unfortunate that this decision was not brought to the notice of the learned Judges of the High Court. Clause (1) of Art. 311 will get attracted only when a person who is a member of Civil Service of the Union or an All India Service or a Civil Service of a State or one who holds a civil post under the Union or a State is 'dismissed' or 'removed' from service. The provisions of the said clause have no application whatever to a situation where a Government servant has been merely placed under suspension pending departmental enquiry since such action does not constitute either dismissal or removal from service. The High Court was, therefore, manifestly in error in quashing the order of suspension passed against the respondent on the ground that it was violative of clause (1) of Art. 311 of the Constitution."

9. The Supreme Court further in the case of **P.L. Shah vs. Union of India and another**[2] held as under:-

> "6. An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him."

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10. Following the settled principle of law, this Court in the matter of **Manharan lal Dhiver vs. State of Chhattisgarh & others** in W.P. (S) No. 5246 of 2006 passed on 4th October, 2006 observed as under:-

> " the suspension is temporary and it does not involve punishment with civil consequences. Suspension means a temporary deprivation of the functions not amounting to any reduction of his rank or his status. The employee under suspension continues to be a Government Servant, he is not permitted to work keeping in view pendency of departmental enquiry to avoid undue influence in the proceedings of departmental enquiry and likely tampering with on records. At this stage, it is not necessary to go into the charges levelled against the petitioner because it may prejudice the case of the parties in the pending departmental enquiry."

11. In view of the foregoing and for the reasons stated hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

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1 AIR 1985 SC 701

2 (1989) 1 SCC 546

Subhash